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**United States Department of Energy  
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing )  
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 Filing Date: January 10, 2023 ) Case No.: PSH-23-0042  
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Issued: May 16, 2023

## Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, as set forth at 10 C.F.R. Part 710, “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”<sup>1</sup> As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual’s access authorization should be restored.

## I. Background

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In May 2022, the Individual was arrested and charged with Domestic Battery (1<sup>st</sup>). Ex. 1. Due to security concerns related to the Individual's criminal conduct, the Local Security Office (LSO) informed the Individual, in a Notification Letter, that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. *Id.* In the Summary of Security Concerns (SSC) that accompanied the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline J (Criminal Conduct) of the Adjudicative Guidelines. *Id.*

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations to request an administrative review hearing. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted fifteen numbered exhibits (Exs. 1–15) into the record. The Individual introduced one lettered exhibit (Ex. A.) into the record and presented the testimony of three witnesses, including himself. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

<sup>1</sup> The regulations define access authorization as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

#### **IV. Regulatory Standard**

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9<sup>th</sup> Cir. 1990) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

#### **IV. Notification Letter and Associated Security Concerns**

As previously mentioned, the Notification Letter included the SSC, which sets forth the derogatory information that raised concerns about the Individual's eligibility for access authorization. The SCC specifically cites Guideline J of the Adjudicative Guidelines. Ex. 1. Guideline J addresses criminal conduct. Adjudicative Guidelines at ¶ 30. Such conduct "creates doubt about a person's judgment, reliability, and trustworthiness" as "[b]y its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations." *Id.*

Regarding Guideline J, the LSO cited and alleged that, in May 2022, the Individual was arrested and charged with Domestic Battery (1<sup>st</sup>), after he and his girlfriend engaged in a physical altercation, during which the Individual punched his girlfriend in the face using a closed fist. Ex. 1. The LSO additionally cited that, in a June 2022 Letter of Interrogatory (LOI), the Individual admitted that he and his girlfriend engaged in a physical struggle prior to the arrest. *Id.*

#### **IV. Findings of Fact**

A May 2022 police report (Report) indicates that law enforcement was dispatched in response to a "Family Disturbance" which occurred in a hotel. Ex. 8 at 7. According to the call that requested police assistance, "a male adult had hit a female." *Id.* The female was identified as the Individual's girlfriend (Girlfriend), and according to the paramedic who transported the Girlfriend to the hospital, the Girlfriend stated that "her boyfriend[,] later identified as [the Individual,] had punched

her in the face.” *Id.* Upon seeing the Girlfriend, a police officer observed dried blood on the Girlfriend’s face, swelling on the left side of her face near her jaw, and a cut on her left eyebrow. *Id.* Another officer observed a lump on the back of her head. *Id.*

According to the Report, the Girlfriend told the officers that she and the Individual had been consuming alcohol throughout the day, and “she did not remember what happened and how she got back to the hotel room.” *Id.* However, the police Report indicated that the Girlfriend reported that she and the Individual engaged in an argument regarding “their ex-husband and an ex-wife,” and she “had woken up at one point and found herself on the floor of the hotel room and [the Individual] was on top of her.” *Id.* The Report noted that the Girlfriend stated that the Individual had punched her in the face with a closed fist, and although she and the Individual had engaged in previous arguments, they had never been violent or physical in nature. *Id.*

The Report noted that the Girlfriend “seemed semi-intoxicated and coherent,” and she “later change[d] her story and stated that she did not remember who was on top of or punching her.” *Id.* Additionally, the Report stated that the Girlfriend responded with “[‘I don’t know[’] for questions she had previously answered . . . and later stated she could not remember any details of the incident.” *Id.* The Report also indicated that the Girlfriend refused to be photographed. *Id.*

According to the Report, when law enforcement encountered the Individual, he smelled strongly of alcohol and had a scratch on his nose, a small cut on his bottom lip, and an abrasion on his left knee. *Id.* Law enforcement noted that the Individual stated that the injuries were “from people outside,” and he “did not know what happened” in the hotel room between him and the Girlfriend. *Id.* at 8. Law enforcement subsequently arrested the Individual. *Id.*

In his June 2022 LOI,<sup>2</sup> the Individual explained that he and the Girlfriend took a vacation to celebrate their relationship and progress in their careers. Ex. 12 at 1. He reported that, around noon, he and the Girlfriend walked to a nearby hotel to eat. *Id.* Their plan was to tour the sites and perhaps go dancing. *Id.* However, they stopped in a bar and began consuming straight whiskey. *Id.* The Individual estimated that they each consumed five shots over a ninety-minute period. *Id.* Realizing that they had consumed too much alcohol, the Individual recalled that they returned to the hotel room to rest. *Id.* According to the Individual’s response to the LOI, the Girlfriend wanted to go back out, but the Individual did not believe that was “a good idea,” and the couple began arguing. *Id.* The Individual stated that the Girlfriend then began vomiting on the floor and trying to leave the room despite being “barely [able to] stand up.” *Id.* The Individual noted that he has “several very spotty memories” regarding preventing her from leaving the room, including “hugging her from behind.” *Id.*

According to the LOI, the Girlfriend later calmed down and was lying on the bed. *Id.* The Individual recalled “smacking her on the butt to keep her awake” when another argument ensued

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<sup>2</sup> The Individual noted that, in completing the LOI, he and the Girlfriend had to piece together the chain of events leading up to the arrest as they both have blank spots in their memory due to their alcohol consumption. Ex. 12 at 1. He noted that the Girlfriend was able to obtain additional information about the events preceding the arrest the following day. *Id.*

regarding the Individual being on his phone. *Id.* The Individual remembered the Girlfriend trying to grab the phone from his hands. *Id.* He noted that the Girlfriend “kind of rolled/crawled over [him] and went to walk . . . around the bed, tripped and fell towards the dresser.” *Id.* The Individual stated that he then “pulled her up and she had a cut on her face.” *Id.* He stated that he does not know what caused the cut but believes it could have occurred as a result of the fall or “in the struggle for [the] phone.” *Id.* The Individual stated that he has “no recollection of ever punching her in the face.” *Id.*

The Individual noted that, after he pulled the Girlfriend off the floor, she never said anything about being punched. *Id.* at 2. The Individual recalled the Girlfriend going to the bathroom but later realized that she had left the room. *Id.* According to the LOI, the day following the incident, hotel security told the Girlfriend that it received a report from someone that she was staggering around the hotel bleeding, and because she couldn’t speak clearly, hotel security called for paramedics. *Id.*

Ultimately, the Individual acknowledged that there was a physical struggle, but he maintained that it was a physical struggle to keep the Girlfriend in the room and safe until she was no longer intoxicated. *Id.* at 5. He asserted that he does not believe that he punched her in the face and does not believe that he would do that. *Id.* However, the Individual acknowledged that neither he nor the Girlfriend can reliably state how the Girlfriend obtained the cut. *Id.*

The district attorney did not prosecute the Individual as a result of the incident; however, due to the role of alcohol in this incident, the Individual underwent a psychological evaluation in September 2022 with a DOE psychologist. Ex. 2 at 7; Ex. 13. The psychologist determined that the Individual does not have an alcohol use disorder nor does he habitually or binge consume alcohol to the point of impaired judgment. Ex. 13 at 6.

At the hearing, a coworker (Coworker) testified on the Individual’s behalf. Tr. at 15. The Coworker testified that she has worked with the Individual for approximately six years. *Id.* She felt that, over the years, she has come to know the Individual “a lot better” and believes him to be a “great person.” *Id.* at 15, 17. The Coworker testified that she finds the Individual to be reliable and “one of the nicest people you’ll ever meet.” *Id.* at 17. She stated that she has never observed the Individual to be violent, and to the contrary, she has found him to be “the peacemaker” in meetings with “very aggressive” individuals. *Id.* at 20. The Coworker felt that the Individual would not be “capable of committing criminal acts.” *Id.* at 22.

The Girlfriend also testified on behalf of the Individual. She stated that she met the Individual in the autumn of 2020 and began living with him approximately a year later. *Id.* at 25, 27. She stated that the couple decided to have a “celebration trip” because their “lives were just going really, really [well.]” *Id.* at 27. In recalling the day of the incident cited in the SSC, the Girlfriend stated that she was “really super excited” to be at the destination and was “ready to party.” *Id.* at 27–28, 38. To the best of her recollection, she remembered getting to a restaurant for brunch and drinking

a Mimosa and a Long Island Iced Tea.<sup>3</sup> *Id.* at 28, 31. After leaving the restaurant, the Girlfriend testified that the couple went into a bar, where she “kind of just lost it.” *Id.* at 29. At the bar, she recalled that they were having “good time,” and she was “already pretty intoxicated.” *Id.* at 29, 32. She noted that she knew that her behavior was altered as she was drinking straight whiskey, which was out of character for her. *Id.* at 32. The Girlfriend testified that she eventually got up to use the restroom, and in the restroom, she remembered looking at herself in the mirror and telling herself “you better settle down . . . it’s time to chill out.” *Id.* at 29. Although she recalled coming back to her seat in the bar, her memory thereafter is so limited that she feels that the day did not “exist after that moment.” *Id.* at 29–30. The Girlfriend testified that her next memory was waking up in the hospital. *Id.* at 33.

Upon waking up in the hospital, the Girlfriend recalled asking for the Individual. *Id.* at 34. She testified that the hospital nurse told her that she came in alone, and the nurse did not know what happened to her. *Id.* According to the Girlfriend, the nurse was only able to tell her that she heard that the Girlfriend was roaming around a hotel, bleeding, with a gash on her eye, unable to communicate well. *Id.* The Girlfriend testified that her only injury was a gash above her eyebrow that a physician glued together. *Id.* at 35–36. She noted that there was a slight discoloration near the gash, but she stated that it was not a black eye and did not even amount to a bruise. *Id.* at 36. With regard to the Report indicating that she had a swollen jaw and lump on the back of her head, the Girlfriend testified that these details were not accurate. *Id.*

The Girlfriend stated that she did not become aware that the police had been involved until she spoke with hotel security the day after the incident. *Id.* at 38. She stated that she has no memory of ever speaking with the police. *Id.* at 44. She indicated that, the day following the incident, hotel security showed her video footage of her and the Individual returning to the hotel, laughing and dancing, and the next time she was seen on the footage, she was wandering “almost every level” of the hotel. *Id.* at 39. She noted that it appeared that she was looking for her room. *Id.* The Girlfriend affirmed that she did not remember anything that occurred in the hotel room or “being lost in the hall.” *Id.* at 40. She stated that hotel security told her that the reason paramedics and law enforcement were called was because she was not able to “make out words;” they could not understand what she was saying; and they could not help her. *Id.* at 41–42. The Girlfriend stated that because of her lost memories, she has been forced to piece together much of what occurred from talking to other people, including hotel security and the Individual. *Id.* at 45.

The Girlfriend testified that, although the couple has had disagreements in their relationship, they have good communication skills, and there has never been any aggression. *Id.* at 48. She stated, however, that in her past, she was involved in a physically abusive relationship with an ex-boyfriend.<sup>4</sup> *Id.* She noted that this past relationship left her mentally damaged, and she was eventually diagnosed with Post Traumatic Stress Disorder (PTSD). *Id.* at 48, 58, 70. The Girlfriend

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<sup>3</sup> I note that the Girlfriend was struggling to remember the quantity and type of beverage she consumed at the restaurant. *See* Tr. at 28, 30–31.

<sup>4</sup> The Girlfriend noted that there is an error in the Report, where it indicates that she and the Individual argued over her ex-husband. Tr. at 48.

elaborated, stating, the ex-boyfriend “struck me in my face . . . he punched me in my eye, and . . . everything in that statement [to the police] -- it literally is exactly what happened to me in that relationship [on the] night” of the physical abuse. *Id.* at 57. The Girlfriend additionally explained that when her ex-boyfriend punched her in the eye, it caused severe damage to her entire face that required reconstructive surgery. *Id.* at 61. She explained that, given the minor cut she sustained, what occurred in the hotel was “not a punch. I assure you.” *Id.* She noted that, in reading the Report, she thought, “it’s literally what had happened to me with my [ex-boyfriend], everything . . . it was almost like it played back.” *Id.* at 57. The Girlfriend opined that when she became lost in the hotel, she must have begun to panic and relive the trauma that her ex-boyfriend inflicted. *Id.* at 59-60. She testified that she knows “for a fact that [the Individual] did not touch [her], because that’s not [the Individual’s] character.” *Id.* at 55.

Lastly, the Individual testified on his own behalf. Expanding on the information he provided in the LOI, the Individual stated that he and the Girlfriend went to brunch at a large hotel around 11:30 a.m., where he ordered and consumed the drink offering, which was one Mimosa and two Long Island Iced Teas. *Id.* at 75. He explained that the brunch restaurant was in the back of a large hotel, and after brunch, he and the Girlfriend began walking to the front of the hotel, passing shops, games, and bars. *Id.* at 75-76. According to the Individual, he stopped and drank a double shot of whiskey. *Id.* at 76. The Individual testified that, around 12:45 p.m., he and the Girlfriend stopped at a bar at the front of the hotel, where he consumed five shots of whiskey. *Id.* at 76-77. He stated that, at this point, he noticed that the Girlfriend was stumbling, so he wanted to take her back to their hotel room to rest. *Id.* at 78. The Individual noted that on the way back to the hotel, he and the Girlfriend were “dancing around,” and he scratched his face on some material that was covering scaffolding on the street, explaining the scratches that were noted in the police report.<sup>5</sup> *Id.* at 97-98. He testified that, although he remembers walking back to their hotel, he does not remember getting on the elevator to go up to their room. *Id.* at 81.

In the hotel room, the Individual stated, he then remembered seeing the Girlfriend vomit over the edge of the bed, helping her get cleaned up, and then lying in bed with her attempting to keep her awake. *Id.* at 82. Next, he remembered the Girlfriend crawling over him trying to get his phone and then hearing the Girlfriend “moaning and making noises.” *Id.* at 83. The Individual stated that he got up, saw the Girlfriend face down at the foot of the bed, and picked her up. *Id.* He testified that she was asking him to let her go because she wanted to go out, but he sat her on the bed and walked into another part of the room. *Id.* He stated that when he came back, the Girlfriend had blood pouring down her face. *Id.* at 84. The Individual noted that the Girlfriend then went to the restroom to get a towel, and when she came back, she indicated that she wanted to go back out and she was going to go “fix” the cut on her head. *Id.* at 85. He testified that he remembered the “room swirling” and having a hard time staying awake. *Id.* at 86. The Individual stated that the next thing he remembered was hearing a knock at the door and opening it to find the hotel staff with the police, at which point, he was arrested. *Id.* at 86-88.

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<sup>5</sup> The Individual clarified that the injury on his knee that was noted in the police report was an old scab that occurred a week prior. Tr. at 97-98.

The Individual testified that, despite his memory lapses, he knows he did not intentionally hurt the Girlfriend. *See id.* at 93, 113. He stated, “I will tell you 99.999 percent I would put money on myself I would never do such a thing. . . . There is no way I would ever do that to her, or anybody else.” *Id.* at 93. He argued, “why would I punch her in the face? It doesn’t make sense. I’m trying to stop her from getting hurt. I had no . . . anger towards her.” *Id.* Furthermore, the Individual added that he has no history of violence, was married for 22 years without any issues related to domestic violence, and has never engaged in any violence or aggression with the Girlfriend, outside of the allegations contained in the Report. *Id.* at 133.

## **VI. Analysis**

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the Individual and other witnesses during the hearing. In resolving the question of the Individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual has sufficiently mitigated the security concerns cited by the LSO under Guideline J of the Adjudicative Guidelines. Therefore, I find that the Individual’s access authorization should be restored. The specific findings that I make in support of this decision are discussed below.

Regarding Guideline J, evidence of criminal conduct, “regardless of whether the individual was formally charged, prosecuted, or convicted” can raise a security concern and may disqualify an individual from holding a security clearance. Adjudicative Guidelines at ¶ 31(b). An individual may be able to mitigate the concern if he shows:

- (a) So much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment;
- (b) The individual was pressured or coerced into committing the act and those pressures are no longer present in the person’s life;
- (c) No reliable evidence to support that the individual committed the offense; and
- (d) There is evidence of successful rehabilitation; including, but not limited to, the passage of time without the recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

*Id.* at ¶ 32.

Here, the security concern arises from the allegation that the Individual punched the Girlfriend in the face during an argument. However, the only evidence supporting that specific allegation is the Report. Upon examination of the document, I find various elements of the Report and the

circumstances surrounding its construction to raise questions about its accuracy. *See id.* at ¶ 32(c). First and foremost, according to the Girlfriend, law enforcement interviewed her while she was intoxicated to such a degree that she cannot even remember giving a statement; yet, the Report characterizes her solely as “semi-intoxicated.” Secondly, the Report indicates that, during the interview, the Girlfriend gave contradictory statements, including that the Individual punched her and, also, that she could not remember who punched her. The Report also indicates that she could not remember any details of the incident. Furthermore, according to the Girlfriend, the Report contains several errors, including the statement that the couple argued over her ex-husband, when she only has an ex-boyfriend, and the description of her injuries, including a swollen jaw and lump to the back of the head, which she claims she did not have.

Although I am aware that victims of domestic violence often change their stories to protect their abusers, I do not find that to be the case here. I found the testimony of both the Girlfriend and the Individual to be credible, especially the Girlfriend’s testimony regarding her description of her previous experience with domestic violence. I found particularly compelling her suspicion that, on the day of the incident, she was recounting the punch to the face by the ex-boyfriend in a moment of panic heightened by intoxication. Furthermore, the relatively minor injury she described resulting from the events in the hotel room is not consistent with the type of injury that would arise from a violent punch to the face, which she described having previously suffered and which required reconstructive surgery.

I acknowledge that by the Individual’s own testimony, there does appear to have been a scuffle of some kind in the hotel room; however, I cannot find that it involved violence or aggression. I find the Individual’s testimony regarding how he sought to keep the Girlfriend in the hotel room while the effects of the alcohol subsided to be credible. Further, any additional physical altercations that may have occurred appear to be the result of the debilitating effects of the substantial amounts of alcohol the couple consumed. The record demonstrates that the district attorney declined to prosecute the Individual regarding this incident, and the Individual has no history of violence or aggression, in his previous 22-year marriage or in any other relationship, and I cannot find that an act of violence occurred on this occasion. In light of the foregoing, I find that mitigating condition (c) applies in this case. *See id.* at ¶ 32(c).

Regarding the remaining three mitigating factors under Guideline J, I do not find them to be relevant in this case as I have not found that any criminal behavior occurred. *See id.* at ¶ 32 (a), (b), (d). As such for the forgoing reasons, I find that the Individual has mitigated the security concerns arising under Guideline J.

## **VII. Conclusion**

After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I have found that the Individual has brought forth sufficient evidence to resolve the security concerns associated with Guidelines J. Accordingly, I have determined that the



Individual's access authorization should be restored. This Decision may be appealed in accordance with the procedures set forth in 10 C.F.R. § 710.28.

Katie Quintana  
Administrative Judge  
Office of Hearings and Appeals